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No. 690

In the

Supreme Court of the United States

OCTOBER TERM, 1961

G. C. NUNN, RECEIVER, HORACE SMITH, FRED NEMEROVSKI, HARRY BALLIS AND MYRTLE BALLIS,
Petitioners,

v.

R. L. FELTINTON, LYDIA M. FELTINTON, SAMUEL C. LURIE, JOSEPHINE M. LURIE, WILLIAM L. LURIE, INDIVIDUALLY AND AS TRUSTEE, AND RITA M. LURIE,
Respondents.

RESPONDENTS' REPLY BRIEF

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RESPONDENTS' REPLY BRIEF

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Respondents, R. L. Feltinton et al., hereby submit their Reply Brief in opposition to the Petition for Writ of Certiorari filed herein on January 29, 1962.

OPINION BELOW

The opinion of the United States Court of Appeals (R. 345-363) is reported at *294 F. 2d 450*. The United States

District Court for the Western District of Texas did not render an opinion.

JURISDICTION

The judgment of the United States Court of Appeals (R. 364) was entered September 15, 1961. A petition for rehearing was filed on October 30, 1961 (R. 372) pursuant to an extension of time for such filing granted on October 9, 1961 (R. 371) and the petition was denied on December 12, 1961 (R. 416). The petition for a writ of certiorari was filed on January 29, 1962. The jurisdiction of the Court is invoked under *Subdivision (1), Section 1254, Title 28, United States Code*. Jurisdiction under that statute is subject to *Section 2101, Subsection (c), of Title 28, United States Code* (Appendix, page 27 below). Also, Petitioners invoke *Subdivision (b), Section 1, Rule 19, Supreme Court Rules*.

QUESTIONS PRESENTED

1. Whether Federal jurisdiction on the ground of the diversity of citizenship existing between the plaintiff-Receiver, a resident of Texas, and defendants, residents of Illinois and New York, is defeated by the joinder as plaintiffs of individuals, citizens of Illinois, who are not necessary parties because under the law of Texas, the State where the receiver was appointed and this action was brought, they are represented by the plaintiff, a general receiver, who alone is authorized to prosecute the causes of action alleged in the complaint.

2. Whether a court in Texas may recognize a succession pursuant to the corporate charter, of which the Illinois Banking Act is a part, to the title to Texas realty owned by an insolvent Illinois banking corporation.

THE STATUTES INVOLVED

As to the jurisdiction of the Federal Courts on the basis of diversity of citizenship, the statutes involved are *Sections 1332 and 1441(a) of Title 28, United States Code*, (Appendix, page 27 below), which provide for removal to United States Courts of actions involving controversies between citizens of different states.

As to the decisions of the District Court and the Court of Appeals on the merits, Respondents do not believe that constitutional issues are involved in this case.

STATEMENT UNDER FIRST QUESTION

Horace Smith, of Texas, and Fred Nemerovski and Harry and Myrtle Ballis, of Illinois, procured in 1959 the appointment by a state district court in Texas, in an action to which Respondents are not parties, of G. C. Nunn, a citizen of Texas, as general receiver for the property and causes of action in Texas of a dissolved Illinois state bank and the interests of its stockholders, depositors and creditors in Texas property and causes of action which remained vested in the bank at the time of its dissolution in 1948.

Following his appointment, G. C. Nunn, the general receiver for the bank and of the claims and causes of action of

its shareholders, instituted the present suit in a state district court in Texas. The Receiver was joined by Horace Smith, a purchaser of shareholder's rights, and Fred Nemerovski and Harry and Myrtle Ballis, alleged former stockholders and depositors of the bank. The complaint refers to the 1959 Texas receivership proceeding, the pertinent provisions of which are stated in the opinion of the Court of Appeals *(294 F. 2d at 452)*. The real estate described in the order of appointment includes the nonparticipating royalty which is the subject of this suit. That opinion *(294 F. 2d at 452 and 453)* also quotes the applicable statutes [*Articles 2293(3), 2297* and *2310 R.C.S. of Texas*].

This suit is in trespass to try title and to quiet title and for declaratory judgment, with consequent pleas for cancellation and removal of cloud, for the recovery of certain nonparticipating royalty interests in lands in Pecos County, Texas, which are alleged to have been owned by the bank and to have passed to its shareholders on dissolution of the bank.

This suit was removed to the United States District Court for the Western District of Texas, Pecos Division, on the grounds that diversity of citizenship exists between the Receiver, G. C. Nunn, and all the defendants, who are citizens of Illinois and New York, and that the other parties who join with the Receiver as plaintiffs are mere formal and unnecessary parties whose claims were vested in the Receiver at their own request and whose citizenship should not be considered in determining whether the requisite diversity of citizenship exists. Petitioners filed a motion to remand which was overruled by the district court.

Motions for Summary Judgment were filed by Petitioners and Respondents and the district court overruled Petitioners' Motion, sustained Respondents' Motion and entered judgment for Respondents. The rulings of the district court on the Motion to Remand and the Motions for Summary Judgment were affirmed by the United States Court of Appeals for the Fifth Circuit and rehearing has been denied.

ARGUMENT OF FIRST QUESTION

Diversity of citizenship exists between plaintiff-Nunn, Receiver, and all defendants. (Petition for Writ, p. 5); Petitioners do not question that this receiver has authority to represent all other Petitioners in this case (Petition for Writ, Question 1, p. 3).

As stated by the Court of Appeals, the question relating to the diversity jurisdiction of the Federal Courts depends upon the extent of the capacity of G. C. Nunn, Receiver, under the laws of Texas, to represent the three Illinois residents who were joined with the Receiver as plaintiffs. The proceedings in the state court, in which Nunn was appointed Receiver for the bank and its stockholders, depositors and creditors were referred to in the complaint filed by the Receiver, and the other parties joining with him, against Respondents, which complaint was the basis of this action. An examination of the appointment proceeding, and particularly the order of appointment (R. 39), makes it clear that the appointing court intended to make G. C. Nunn the owner for the purpose of the receivership of all causes of action for the

recovery of the nonparticipating royalty interests involved in this suit and imposed upon him the power and duty to present, on behalf of the bank and its stockholders, depositors and creditors, all such causes of action.

The Texas statutes and the decrees of the appointing court are set forth in the opinion of the Court of Appeals *(294 F. 2d at 452 and 453)*. Also, the many Texas cases relating to the exclusive right of a general receiver to pursue a cause of action placed under his control by the order of the appointing court or by operation of law are discussed by the court in detail.

However, Petitioners have attacked the diversity jurisdiction of the United States Courts in this case on the ground that Smith, Nemerovski and Ballis, who sought the appointment of the Receiver, G. C. Nunn, in the state district court, retained, after his appointment, a joint and direct interest with the Receiver in the alleged causes of action for the recovery of the nonparticipating royalty interests involved in this suit. This contention ignores the terms of the order of appointment of the Receiver, G. C. Nunn, and the statutes and laws of Texas applicable to a general receiver such as Nunn.

Contrary to the contention of Petitioners, the interest of the Illinois plaintiffs in the subject matter of this case, after the appointment of Nunn, Receiver, was not direct nor was it joint with their Receiver. The interest, if any, of the individual plaintiffs, including the Illinois Petitioners, was derivative and contingent only. If Nunn, Receiver, should re-

cover the property from Respondents, the Illinois Petitioners would participate with other shareholders in the division of whatever might remain after administration in receivership. It is the Receiver, and not the shareholder claimants for whose claims the Receiver was appointed, who has authority to sue for property claimed to belong to the shareholders of the bank on dissolution. It is the duty of the Receiver to recover and administer what assets he can; to this end he is authorized by the receivership proceedings and statutes to sue in his own name. "Any legal action that may be instituted shall be in the name of the Receiver." (R. 49; *394 F. 2d at 452.*) This provision includes the present action in which the individual Petitioners have joined without necessity or legal authority.

The Receiver, G. C. Nunn, was authorized and directed to assert the causes of action which he and the individual plaintiffs have asserted in this case. Neither the receivership proceedings or statutes or decisions require the presence or joinder of the shareholders in the suit. The Receiver is given charge and control of the causes of action. The causes of action cannot have two masters. The receivership proceedings do not commit the causes of action to the joint control of the Receiver and those he represents. In the receivership proceedings any causes of action which any shareholder, creditor or depositor might have with respect to the properties involved in this suit were surrendered to the Receiver. The Receiver was empowered and had authority under Texas law and the order of the appointing court to institute suit in his

own name for the recovery of the nonparticipating royalty interests. Although the Illinois Petitioners join in the assertion of the same claims asserted by the Receiver, the complaint shows on its face, when considered in connection with the receivership proceedings referred to in the complaint, that these Petitioners have no direct claim but only a derivative one through the Receiver. Thus on the face of the complaint, the Illinois Petitioners are not necessary to the assertion of any causes of action asserted in the complaint. There is complete diversity of citizenship between all necessary parties.

After appointment of the Receiver, the shareholders had no direct or joint interest in the causes of action. They are represented by the Receiver and their presence as plaintiffs in the case is immaterial. The individual Petitioners are equally bound by the judgment against the Receiver which denied him and those he represents all right and title to the property sued for, whether those individual Petitioners are named in the complaint or not. They are mere formal and unnecessary parties whose citizenship is to be ignored in determining whether the requisite diversity of citizenship exists in this case.

The cases of *Barney v. Latham, 103 U. S. 205, 26 L. Ed. 514 (1881); Salem Trust Co. v. Manufacturers Finance Co., 264 U. S. 182, 44 S. Ct. 266, 68 L. Ed. 628 (1924)* and *Lee v. Lehigh Valley Coal Co., 267 U. S. 542 (1925)*, which are cited by the Court of Appeals, hold that the joinder of formal or unnecessary parties cannot prevent the removal of an action to a federal court. Statutes and decisions prescribing

or defining Federal diversity jurisdiction do not distinguish between the joinder of unnecessary parties as plaintiff or defendant.

Contrary to the assertions of Petitioners, there is no conflict between the decisions below in this case and *American Fire & Casualty Co. v. Finn, 341 U. S. 6, 71 S. Ct. 534, 91 L. Ed. 702 (1951)*. The instant case was not removed under § 1441(c) of Title 28, United States Code. The amendment of that statute changing the basis for removal from a "separable controversy" to a "separate and independent claim or cause of action" is immaterial. Respondents have never asserted that a separable controversy or a separate and independent claim or cause of action exists between the Receiver and any of the other Petitioners on the one hand and Respondents on the other. On the contrary, all controversies, claims or causes of action of parties to the receivership action, including the individual Petitioners, for the recovery of the nonparticipating royalty interests involved in this suit on behalf of the dissolved bank or its shareholders, depositors or creditors are vested in the Receiver, G. C. Nunn. No question of representation was involved in *Finn*.

Smith v. Sperling, 354 U. S. 91, 77 S. Ct. 1112, 1 L. Ed. 2d 1205 (1957), cited by Petitioners, is not applicable. In *Sperling* a question of representation was involved. However, the pleadings and the nature of the dispute showed that the claimed representative was hostile and antagonistic to the enforcement of the claim of the stockholder it was supposed to represent. Under these circumstances, the claimed representative did not represent the stockholder. No antagonism or

hostility between the Receiver and the individual plaintiffs is presented in this case. The Receiver and the shareholders are antagonistic to Respondents. The Receiver was appointed to recover the realty from Respondents, adverse claimants, on behalf of the shareholders of the dissolved bank, whom the Receiver represents, and to administer the assets, if recovered, for the benefit of those represented. The Receiver has, in accordance with his appointment and the applicable statutes, represented and sued in behalf of the shareholders.

Petitioners also cite *Second National Bank v. New York Silk Mfg. Co., 11 F. 532 (1882)*, which is inapplicable. That case involved an attachment proceeding filed prior to the appointment of the receiver and the receiver did not acquire, therefore, a right to possession and control of the property which was in legal custody at the time of his appointment. Further, the case involved a specific New Jersey statute which provided that even though a receiver was appointed for an insolvent corporation, the corporation could continue to use and exercise its franchises and transact ordinary business in its own name for *four months after the appointment of the receiver*. Such a continuing right is not provided by the Texas law. The Texas cases cited by the Court of Appeals hold that title to the insolvent corporation's property passes by operation of law to the receiver at the time of his appointment.

In *Bates v. New Orleans B.R. & V.R. Co., 16 F. 392 (C.C.N.D.N.Y. 1883)*, cited by Petitioners, the citizenship of certain trustees was ignored for the purpose of determining diversity of citizenship. The opinion is a memorandum deci-

sion and does not reveal the function for which the trustees were appointed. The terms of the trust may have been such as to permit the cestui to sue. *4 Bogert, Trusts and Trustees, Part 1 (1948) 459-464, Sec. 870.* The case states that the trustees' connection with the controversy was "collateral and subsidiary to the main issue". Such is not the situation here. The Receiver, G. C. Nunn, is an active representative of the other plaintiffs, enjoined by Texas law to carry on the suit in their behalf.

In *Banigan v. City of Worcester, 30 F. 392 (C. C. Mass. 1887)*, cited by Petitioners, the trustee's citizenship was ignored because the trust was apparently created for the sole purpose of creating diversity of citizenship. So far as the opinion discloses, it was a dry trust.

None of the cases cited by Petitioners has any bearing on the instant case where the Receiver is vested with all causes of action for the recovery, from persons not parties to the receivership action, of the property in suit, in accordance with Texas statutes and under specific order of the court which appointed him.

STATEMENT UNDER SECOND QUESTION

The property involved in this suit was owned by the West Side Trust and Savings Bank of Chicago, Illinois, an Illinois banking corporation. Section 11 of the Banking Act of Illinois (Appendix, page 27 below) was in effect when the bank's charter was amended (R. 209-213) and at all subsequent times during the existence of the bank, including the bank's final dissolution in 1948. That Section 11 pro-

vides that on a finding of the state Auditor of Public Accounts that the bank should be liquidated, he should appoint a receiver for liquidation who should have title to all of the assets of the bank for purposes of the receivership, with authority to sell the real and personal property of the bank on order of a court of record of the county in which the Bank was located. Such finding was made by the Auditor (R. 189) and successive liquidating receivers appointed in writing by him (R. 11-12). The last liquidating receiver, on orders (R. 214 and 235) of the Superior Court of Cook County, Illinois, a court of record of the county in which the bank was located (R. 182) in an action in chancery to which the bank was a party by personal service on its president and to which the liquidating receiver was a party (R. 203), sold to Respondents' predecessor the property involved in this suit (R. 235). The Superior Court found that all assets of the bank had been disposed of by the Illinois liquidating receiver and ordered dissolution of the bank (R. 268). Petitioners claim that Article IV, Sections 1 and 2, Article VI, and Amendments, Articles X and XIV, Section 2 of the Constitution of the United States prohibit the Court of Appeals, in this case arising in Texas, from giving effect to the provisions of the Illinois Banking Act giving title to the receiver for liquidation. Petitioners contend that the property here in suit was not disposed of before dissolution of the bank, notwithstanding the adverse finding of the Superior Court in a suit to which the bank was a party, but passed to the bank's shareholders on its dissolution.

A full discussion of the facts relating to the liquidation of the bank, disposition of all of its assets, and the sale to Re-

spondents' predecessor in title is contained in Respondents' Motion for Summary Judgment (R. 133-159).

ARGUMENT OF SECOND QUESTION

The Illinois Banking Act became part of the charter of the bank. That charter is a contract. The contract thus provides, voluntarily, that when the State Auditor makes a finding that the bank should be liquidated, the Auditor may appoint a liquidating receiver with title to the assets of every description of the bank. By that provision of the Banking Act the receiver's title extends to property within and without Illinois. *People v. Chicago Lloyds, 391 Ill. 492, 63 N. E. 2d 479 (1945)*, considered with *People ex rel Palmer v. Niehaus, 356 Ill. 104, 190 N. E. 349 (1934)*. *Article 21.28 of the Texas Insurance Code* has a similar provision (Appendix, p. 37 below). The Auditor made a finding that the bank should be liquidated, and by an instrument in writing appointed the liquidating receiver. The receiver succeeded to title to the bank's assets. *Relfe v. Rundle, 103 U. S. 222, 26 L. Ed. 337 (1881); Keatley v. Furey, 226 U. S. 399, 33 S. Ct. 121 (1921); Clark v. Williard, 292 U. S. 112, 54 S. Ct. 615 (1934)*. The liquidating receiver, with the approval of the local court, as provided in the Banking Act, sold the property in suit to Respondent's predecessor. The Superior Court of Cook County, Illinois, having jurisdiction of the subject matter of the liquidation, personal jurisdiction of the bank through service on its President, and personal jurisdiction of the Auditor and the liquidating receiver, who represented the shareholders, depositors and creditors, [*McIlvaine v. City National Bank and Trust Co., 314 Ill. App.*

496, 42 N. E. 2d 93, 101 (1942), ordered the liquidating receiver to convey the property to Respondent's predecessor, and this was done. The Superior Court found that all of the assets of the bank were disposed of by the liquidating receiver.

Petitioners claim that a recognition in Texas, by comity, of a statute or decision of another state in its application to Texas realty is under the facts of this case an "adoption" by Texas of the foreign law. It was the bank, not Texas or the Court of Appeals, that adopted the Illinois Banking Act. The bank accepted the benefits of that Act, which became part of the bank's charter. The courts below merely applied, against the representative of those claiming under the bank on dissolution, the succession provided by the bank's charter through its inclusion of the Banking Act.

This case does not involve an application of Illinois law by voluntary choice of the district court and the Court of Appeals. The voluntary choice was that of the incorporators and directors of the bank, who chose the benefit of Illinois corporation laws with its attendant provisions for universal succession in event of insolvency to title to all the bank's properties by a receiver appointed by the Illinois Auditor of Public Accounts. This is not a discretionary invocation of statutes and proceedings of another state and application of them as a Texas rule of property contrary to the Texas law for transmission of realty. This is not a case where, without more, a Federal court in Texas applies an Illinois statute to determine succession to title to Texas land when Texas has an exclusive and different law for such succession.

Petitioners' argument assumes that the courts below have applied Illinois law and not Texas law. It is not Illinois law but Texas law which is applied by the Court of Appeals; Texas law, which indirectly gives effect to the Illinois Banking Act because it is part of the charter compact. In applying a Texas rule that succession to corporate title to property in Texas may be provided by the corporate charter, which embraces provisions of the statutes of the state of incorporation as to succession on insolvency, where no public policy of Texas is violated, the Court of Appeals is not thereby applying Illinois law rather than Texas law.

Texas law which permits succession to corporate property to be determined by the corporate charter or to be determined by a statute of the state of incorporation which is part of the corporate charter is applicable alike to domestic and foreign corporations. It is not discriminatory.

An essential element of Petitioners' claim is that Articles 2293-2320 R.C.S., Texas, are exclusive and have not been complied with. Those statutes are not applicable. Those statutes apply to ordinary receivers, such as G. C. Nunn, and not to statutory liquidating receivers such as the liquidating receiver appointed by the Illinois Auditor. Texas recognizes that corporate liquidation may be accomplished through a process other than a receiver appointed under Article 2293, R. C. S. Texas. *State Board of Insurance v. Betts, 158 Tex. 83, 308 S. W. 2d 846 (1958); Pink v. State, 105 S. W. 2d 265 (Texas Civil Appeals, 1937), affirmed in Carpenter v. Pink, 133 Tex. 82, 124 S. W. 2d 981 (1939); Texas Insurance Code,*

Article 21.28 (Appendix, page 37 below); *Article 489b, R. C. S. Texas* (Appendix, page 39 below).

Petitioners cite many cases involving sales of property by common law receivers such as *Barnett v. Poole, 23 Tex. 518 (1859); T. & P. Railway Company v. Gay, 86 Tex. 571, 26 S. W. 599 (1894); Moseby v. Burrow, 52 Tex. 396 (1880)*, and *Evans v. Ropte, 128 Tex. 75, 96 S. W. 2d 973 (1936)*. These cases are inapplicable because Texas recognizes the distinction between common law or equity receivership and statutory liquidation.

Articles 2293-2320, R. C. S. Texas, do not apply to the type of liquidation involved in this case. Article 2313 by its terms applies to court-appointed receivers. It does not apply to the liquidator appointed by the Illinois Auditor. It declares a common law rule.

Petitioners also cite *Humble Oil & Refining Co. v. Blankenburg, 149 Tex. 489, 235 S. W. 2d 891*, and *Courseview, Inc. v. Phillips Petroleum Co., 158 Tex. 397, 312 S. W. 2d 197*, and infer that they express an exclusive Texas rule as to succession to title to Texas realty owned by a corporation. Both of those cases are based on *Purifoy v. Wiebusch, 132 Tex. 36, 117 S. W. 2d 773*, which upon this point is in turn based upon *Article 1388 R. C. S., Texas*, (Appendix below, p. 39). While Article 1388 provides a succession, it is not exclusive and is inapplicable when the corporate charter or the law of the state of incorporation provides a different succession. Thus, in *Shropshire v. Shaw, 121 Tex. 463, 49 S. W. 2d 708*, Article 1388 is held not to be exclusive when applied to a

Texas state bank. The authority conferred under Section 1388 is subordinate to the authority of the State Banking Commission to take over the affairs of the bank for the purpose of administration under the provisions of the Texas Banking Laws whenever he finds it necessary to do so for the protection of the rights of depositors and creditors. Texas recognized in *Baldwin v. Johnson, 95 Tex. 85, 65 S. W. 171 (1901)*, that the property of a Louisiana corporation might be liquidated by a Commission appointed in accordance with charter provisions conforming to Louisiana law if the Commission was appointed by written instrument as required by Texas conveyancing statutes. In the present case, an Illinois liquidator was appointed by the State Auditor by such a written instrument. In *Baldwin*, Texas recognized that passage of corporate title may be to statutory liquidators rather than shareholders, and that the type of receivership provided in Articles 2293-2320 R. C. S. Texas, is not the exclusive means of liquidation of a corporation.

There is nothing in the statutes or decisions of Texas which prohibits succession to title to Texas realty by a statutory liquidator for a corporation. There is nothing that requires a corporation to be liquidated by a receiver appointed under Article 2293, R. C. S., Texas rather than a statutory liquidator. There is nothing that requires that corporate property in Texas pass to the shareholders, if the corporate charter or law of the state of incorporation to which the charter is subject provides otherwise.

Petitioners claim that Texas has an exclusive means of passage of corporate title to Texas land which does not in-

clude the means involved in this case. They claim that instead of applying the exclusive Texas means, the Court of Appeals has applied an Illinois statute and proceeding. It is claimed that by applying the Illinois statute and proceeding, instead of the exclusive Texas means, the Court of Appeals denies due process and equal protection of the laws, and abridges the privileges and immunities of citizens.

Articles 1288-1301, R. C. S. Texas, the Texas conveyancing statutes cited by Petitioners, are not exclusive means of passage of title to Texas lands. Fritz, "*The Texas Law of Conveyancing*," *Sections 5 and 6, Supplement to Volume 3, Vernon's Annotated Revised Civil Statutes of Texas; Article 1388, R. C. S. Texas* (Appendix, page 39 below); *Texas Business Corporation Act, Article 5.06 A(4)* (Appendix, page 42 below); *Texas Insurance Code, Article 21.28* (Appendix, page 37 below); *Article 489b, R. C. S. Texas* (Appendix, page 39 below). *Article 1322, R. C. S. Texas* (Appendix, page 41 below) authorizes conveyances on behalf of a corporation but it is not exclusive. *Aransas Pass Harbor Co. v. Manning, 94 Tex. 558, 63 S. W. 627 (1901).*

In the instant case there is no conflict between Texas policy and the Illinois Banking Act and the orders of the Superior Court. Only Illinois has specifically legislated with regard to the succession to title of property of an insolvent Illinois bank. Illinois had power over this corporation, control of its existence and a governmental interest in its dissolution. Texas has no policy denying Illinois the right to grant corporate existence to an Illinois corporation or the right to provide for succession to property belonging to that corporation upon

dissolution. On the contrary, Texas policy with regard to the dissolution of Texas corporations, as expressed in the statutes referred to above and in the opinion of the Court of Appeals, is the same as the policy of Illinois. Thus, under the doctrine of comity, the Texas courts may properly recognize the succession to title by the Illinois liquidator.

No public policy of Texas is violated by recognition of the Illinois liquidation, the title of the liquidating receiver, or the orders and decrees of the Superior Court of Cook County. *McElreath v. McElreath, 345 S. W. 2d 722 (Tex. Sup. 1961)*; *Articles 489b* (Appendix p. 39 below) and *1388* (Appendix p. 39 below) *R. C. S. Texas, Article 21.28, Texas Insurance Code* (Appendix p. 37 below).

Colden v. Alexander, 141 Texas 134, 171 S. W. 2d 383 (1943) and *Teas v. Kimball, 257 F. 2d 817 (5th Cir. 1958)*, cited by Petitioners, do not conflict with the decision of the Court of Appeals in this case. Those cases decline to enforce an oral contract *(Colden)* and a partnership with a married woman *(Teas)* affecting Texas land which are unenforceable under Texas law. In the present case neither the charter contract of the bank nor the decisions of the Superior Court of Cook County, having jurisdiction of the parties and subject matter, are unenforceable in Texas, even though they are pursuant to the Illinois Banking Act and to that extent such act indirectly affects the title to the Texas realty. In the present case the Court of Appeals applies Texas law to determine whether there has been an effective transfer of title. Texas has no policy against succession to corporate title to Texas realty provided by the corporate charter or the law of the state of incorporation.

This is not a case where Illinois, by force of its fiat, provides succession of title to Texas realty contrary to the succession provided by Texas law.

Morris v. Hand, 70 Tex. 481, 8 S. W. 210 (1888); Fall v. Eastin, 216 U. S. 1, 30 Sup. Ct. 3, and other similar cases cited by Petitioners refer only to the well recognized limitation on the power of a court in one state by its own decree directly to divest title to real estate in a foreign state. The cases have no relation to the effect of a foreign decree in personam as res judicata where, as in this case, there is jurisdiction of the person and the general subject matter.

The liquidating receiver did not get his title solely because of the Illinois Banking Act or the decrees or orders of the Superior Court. The bank's charter created a right of property in the liquidator on his appointment by the auditor. This right of property was subject to recognition and enforcement in Texas.

The question here is not whether the law of Texas authorizes Texas courts to adopt the statutes of another state as a rule of decision. It is whether the law of Texas is contrary to the Constitution of the United States when it permits Texas courts to recognize and enforce the contractual rights of the parties by giving effect to the charter of the Illinois bank, when that charter encompasses provisions of the Illinois statute as to succession to title in event of insolvency. This enforcement of contractual rights is not a denial of due process. Since neither the Texas conveyancing nor receivership statutes cited by Petitioners are exclusive or applicable, there is

no denial of due process or equal protection and no abridgme . of privileges and immunities.

Petitioners cite the cases of *Pacific Employers Insurance Company v. Industrial Accident Commission of California, 306 U. S. 493, 59 S. Ct. 629, 83 L. Ed. 940 (1939); Young v. Masci, 287 U. S. 253, 53 S. Ct. 599, 72 L. Ed. 1158 (1933); Alaska Packers Association v. Industrial Accident Commission of the State of California, 294 U. S. 532, 55 S. Ct. 518, 79 L. Ed. 1044 (1935);* and *Carroll v. Lanza, 349 U. S. 408, 75 S. Ct. 804, 99 L. Ed. 1183 (1955),* to illustrate an alleged violation of due process and equal protection. All of these cases involve direct conflicts between workmen's compensation legislation of the states involved. They hold a state is not required to give full faith and credit to a statute or decision of a sister state which is contrary to the policy of the forum. None of the cases deal with the doctrine of comity.

Petitioners refer to the case of *Fischer v. American United Life Ins. Co., 314 U. S. 549, 62 S. Ct. 380, 86 L. Ed. 444 (1942),* as the only case involving the voluntary application of the law of another state in determining possession of property, and contend that such voluntary application may only be had with regard to personal property. This contention is not supported by the cases such as *Baldwin v. Johnson, 95 Tex. 85, 65 S. W. 171 (1901),* and *McElreath v. McElreath, 345 S. W. 2d 722 (Tex. Sup. 1961).*

The decision of the Court of Appeals was not based solely on the Illinois statutes and proceedings as Petitioners imply. Additional facts in this case are that: Illinois is the state of

incorporation and domicile of the bank; the corporate charter includes the Illinois Banking Act; the bank and the liquidating receiver who represented the shareholders, depositors and creditors were parties to the liquidation proceeding in the Superior Court in which the sale was ordered and confirmed and all assets were found to have been disposed of before dissolution of the bank; in that proceeding the Superior Court had personal jurisdiction of all interested parties and jurisdiction of the subject matter which was the liquidation of the bank; Texas requirements for passage of title to Texas realty were satisfied.

Texas may, without exceeding the limitations of the Constitution of the United States, have a rule of decision, applicable alike to domestic and foreign corporations, that succession to title to corporate property on insolvency shall be governed by the law of the state of incorporation; but it is not necessary in this case to go so far as to hold that the Illinois statute is to be applied as such. It is only necessary here to say that Texas may enforce a charter provision of a foreign corporation for succession to title to Texas land; or that Texas may give effect to findings of the Superior Court of Illinois, having jurisdiction of the parties and of the subject matter, that the realty in suit was duly sold to Respondent's predecessor, and all the bank's assets disposed of by the liquidating receiver before dissolution. *McElreath v. McElreath*, 345 S. W. 2d 722 (Tex. Sup. 1961). The decisions below may be sustained on either ground. Under Texas law a party suing for or asking affirmative relief as to Texas realty must recover if at all, on the strength of his own title.

Adams v. Bowles, 149 Texas 52, 228 S. W. 2d 849 (1950); Ballard v. Carmichael, 17 S. W. 393 (Tex. Sup. 1891).

Illinois had both power over and an interest in the liquidation of the Illinois bank which was the subject matter of the liquidation proceedings in the Superior Court of Cook County, Illinois. Such liquidation was within the subject matter of the pertinent provisions of the Illinois Banking Act. The Superior Court had jurisdiction of that subject matter and personal jurisdiction of the bank, the liquidating receiver; and, through his representation, the shareholders, depositors and creditors. It was not necessary that the Superior Court have territorial jurisdiction of all property owned by the bank. There is not involved here a direct transfer of property by fiat of the Illinois court such as was involved in *Fall v. Eastin, 216 U. S. 1, 30 Sup. Ct. 3*, and similar cases cited by Petitioners. The orders of the Superior Court are in personam. They affect only indirectly the Texas realty.

Since the Superior Court had jurisdiction of the subject matter and personal jurisdiction of all parties, its orders and decrees are entitled to full faith and credit in Texas. However, because of the law of Texas regarding comity, it is not necessary to reach this constitutional point, as the Court of Appeals correctly decided *(294 F. 2d at page 458)*.

Recognition by courts in Texas that the Bank has, by its charter made in Illinois, subjected the bank to certain conditions prescribed by the Illinois Banking Act, does not give to the Illinois Banking Act any extra-territorial effect.

John Hancock Mutual Life Insurance Company v. Yates, 299 U. S. 178, 57 S. Ct. 129, 81 L. Ed. 106 (1936).

In short, it may be said that the Texas law applied in the instant case, which is applicable to domestic and foreign corporations alike, is that provisions of a corporate charter for succession to the title to corporate property, including realty, will be given effect where not contrary to public policy. The corporate charter may provide for succession by adoption of the provisions of the law of the state of incorporation. The question presented is whether such a Texas law is invalid under the Constitution of the United States.

The Illinois Banking Act, although it deals with insolvent banks, is not in the nature of a bankruptcy or insolvency law. It provides no discharge. *Denny v. Bennett, 128 U. S. 489, 9 S. Ct. 134 (1888).* No claims of Texas creditors are shown to be involved here. The passage of title from the bank to the liquidating receiver is comparable to a voluntary, not an involuntary transfer. *Clarke v. Willard, 292 U. S. 112, 54 S. Ct. 615, 78 L. Ed. 1160 (1934); Headnotes 4 and 6.* The distinction is recognized in *Cole v. Cunningham, 133 U. S. 107, 10 S. Ct. 269 (1890)* and *Security Trust Company v. Dodd, 173 U. S. 624, 19 S. Ct. 545 (1899).*

CONCLUSION

Petitioners have not demonstrated any conflict between the decision below and any decision of this Court or any court of appeals or Texas court. Neither have they shown any violation of their Constitutional rights to due process and equal protection of the laws, or that privileges or

immunities of citizens are abridged. The decision below was clearly correct both as to the capacity of the Receiver, G. C. Nunn, under Texas law, to represent the shareholders joined with him as plaintiffs in the suit and as to disposition of the realty in suit through sale by the Illinois liquidator. Respondents respectfully submit that the petition for certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of the above Brief were sent by United States mail, postage prepaid, to attorneys for Petitioners by sending the same to Maurice Bullock, Fort Stockton, Texas, and F. H. Panhill and Boyd Laughlin, P.O. Box 670, Midland, Texas, this day of February, 1962.

APPENDIX

ARTICLE 2101(c), TITLE 28, UNITED STATES CODE

(c) Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.

ARTICLE 1441(a), TITLE 28, UNITED STATES CODE

(a) Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

SMITH-HURD ILLINOIS STATUTES

Chapter 16½—Banks

§ 11. *Minimum capital determined by location — Impairment of capital — Misconduct of business*

(a) Banks and banking associations may be organized under the provisions of this Act, at any place within the State, with minimum capital stock as follows:

1. If not within a city, village or incorporated town, or if in a city, village or incorporated town of twenty-five hundred (2,500) inhabitants or less, of twenty-five thousand

dollars ($25,000) provided no bank exists in such place at the time the application to organize is filed with the Auditor of Public Accounts.

2. If in a city, village or incorporated town of more than twenty-five hundred (2,500) and less than ten thousand. (10,000) inhabitants, of fifty thousand dollars ($50,000.00).

3. If in a city, village or incorporated town of ten thousand (10,000) inhabitants and less than fifty thousand (50,000) inhabitants, of one hundred thousand dollars ($100,000).

4. If in a city, village or incorporated town of fifty thousand (50,000) inhabitants or more, of two hundred thousand dollars ($200,000).

(b). Should the capital stock of any bank organized under this Act become impaired, the Auditor shall give notice to the directors to have the impairment made good by assessment of the stockholders, pro rata, for an amount, if necessary, equal to the par value of the stock held by each, or to reduce the capital stock of such bank, if the reduction should not bring the capital below the provisions of this section, and if any stockholder or stockholders of such bank shall neglect or refuse after thirty days notice to pay the assessment as provided in this section it shall be the duty of the board of directors to cause a sufficient amount of the capital stock of such stockholder or stockholders to be sold at public auction (after twenty days notice shall be given by posting such notice of sale in the office of the bank, and by publishing such notice in a newspaper of the city or town in which the bank is located or in a newspaper published nearest thereto) to make good

the deficiency, and the balance, if any shall be returned to such delinquent stockholder or stockholders. If the capital stock of said bank shall remain impaired for sixty days after such notice by the Auditor, or, if it appears from the reports made to the Auditor under this Act, or from any examination made by or on behalf of the Auditor that the conditions of any bank organized under this Act are such that the impairment of the capital stock cannot be made good if in the opinion of the Auditor, it is operating with an insufficient portion of its assets in cash or readily convertible securities, or that the business of any such bank is being conducted in an illegal, fraudulent or unsafe manner, he may, in his discretion, without having taken the steps provided in this section to make good the impaired capital stock, forthwith, for the purpose of reorganization or liquidation through receivership, take possession and control of the banking house, furniture and fixtures, books, records, and assets of every description, of such bank. If the Auditor determines that the bank cannot be reorganized and that the same should be liquidated through receivership he shall appoint a receiver, and require of him such bond and security as he deems proper. Such receiver, under the direction of the Auditor, shall take possession of, and for the purpose of the receivership, the title to the books, records and assets of every description of such bank, and shall proceed to collect all debts, dues and claims belonging to it, and, upon the order of a court of record of the county in which said bank is located, may sell or compound all bad or doubtful debts, and on a like order may sell the real and personal property of such bank, on such terms as the court shall direct.

Such receiver shall file with the Auditor of Public Accounts a copy of each report which he makes to the court, together with such other reports and records as the Auditor may require.

Such receiver shall have authority to sue and defend in his own name with respect to the affairs, assets, claims, debts and choses in action of such bank. He shall also have the authority and it shall be his duty, under the direction of the Auditor, to surrender to customers of such banks their private papers and valuables left with said bank for safekeeping upon satisfactory proof of ownership. As soon as can reasonably be done, he shall resign on behalf of said bank, all trusteeships, guardianships, conservatorships, and all appointments as executor and administrator, making in each case a proper accounting on behalf of said bank. He shall have the power and authority to redeem or take down collateral hypothecated by said bank to secure its notes or other evidences of indebtedness whenever the Auditor deems it to the best interest of the creditors of said bank so to do, and to do such other things and take such other steps from time to time under the direction and approval of the Auditor as may reasonably appear to be necessary to conserve the trust estate and secure the best interests of the creditors of said bank.

Such receiver may petition the Circuit Court of the county in which such bank is located or any judge thereof in vacation for authority to borrow money and to pledge the assets of such bank as security therefor. Upon the filing of such petition, such court or judge shall set a date for the hearing of such petition and shall prescribe the form and manner of the

notice to be given the officers, stockholders, creditors or other persons interested in such bank. Upon such hearing any officer, stockholder, creditor or person interested shall have the right to be heard. If the court by order grants such authority then such receiver may borrow money and issue evidences of indebtedness therefor and may secure the payment of such loan by the mortgage, pledge, transfer in trust or hypothecation of any or all of the property and assets of such bank whether real, personal or mixed, superior to any charge thereon for the expenses of liquidation. Such loan may be obtained in such amount upon such terms and conditions and with such provisions for repayment as may be deemed necessary or expedient and may be obtained for the purpose of facilitating liquidation, protecting or preserving the assets, expediting the making of distributions to depositors and other creditors, providing for the expenses of administration and liquidation, aiding in the reopening or reorganization of such bank or its merger or consolidation with another bank, or in the sale of its assets. Such receiver shall be under no personal obligation to repay any such loan and shall have authority to take any and all action necessary or proper to consummate such loan and to provide for the repayment thereof, and may, when required, give bond for the faithful performance of all undertakings in connection therewith. Prior to petitioning the court for authority to make any such loan, such receiver may make application for or negotiate any such loan subject to obtaining an order of the court approving the same.

The Auditor of Public Accounts, shall, upon appointing a receiver, cause notice to be given by advertisement in such

newspaper as he may direct, once each week for twelve consecutive weeks, calling on all persons who may have claims against such bank to present the same to such receiver and to make legal proof thereof and in case the Auditor of Public Accounts, represented by the Attorney General's office has instituted suit or proceedings for the dissolution or winding up of the affairs of such bank in the Circuit Court of the county where the bank is located, such persons or the receiver to whom such persons have presented their claims may present the same to the clerk of such court and the allowance or disallowance of such claims by said court in connection with the said proceedings shall be deemed an adjudication in a court of competent jurisdiction.

Such receiver shall deposit daily all moneys collected by him in any State or National bank selected by the Auditor, who shall require of such depository satisfactory securities or satisfactory surety bond for the safekeeping and prompt payment of the money so deposited. No interest upon money so deposited shall be required of such depository. However, if any interest shall be paid by such depository, it shall accrue to the benefit of the particular trust to which the deposit belongs.

From time to time the Auditor of Public Accounts shall make a ratable dividend of the moneys collected by such receiver on all such claims as may have been proved to his satisfaction or adjudicated in a court of competent jurisdiction, and, as the proceeds of the assets of such bank are collected, shall make further dividends on all claims previously proven or adjudicated.

The receiver of such bank shall, after the expiration of said twelve weeks, file with the Auditor and with the clerk of such court as may have charge of the liquidation, a correct list of all creditors of said bank, as shown by its books, who have not presented their claims and the amounts of their respective claims after allowing all just credits, deductions and set-offs as shown by the books of said bank. Such claims so filed shall be deemed proven, unless objections are filed thereto by some party or parties interested therein within such time as shall be fixed by the Auditor or by such court as may have charge of the liquidation.

All unclaimed dividends shall be deposited with the Auditor of Public Accounts to be paid out by him when proper claims therefor are presented to the Auditor, and the Auditor shall pay the same out of such sums or funds so deposited with him. After one year from the final dissolution of the bank, the Auditor shall make a pro rata distribution thereof to those claimants who have accepted dividends until such claim or claims are paid in full, and if any of said moneys shall then remain in his hands, the Auditor shall distribute the same pro rata to the stockholders. The Auditor shall deduct, from the funds so deposited with him the expenses of distributing the same.

At the close of the receivership, it shall be the duty of the receiver to turn over to the Auditor all books of account and ledgers of such bank for preservation. All records of such receiverships heretofore and hereafter received by the said

Auditor shall be held by him for the period of two years after the close of the receivership and at the termination of said two year period may then be destroyed.

Whenever any such bank against which proceedings have been instituted, or for which a receiver has been appointed as aforesaid, on account of an alleged impairment of its capital stock or alleged conduct of its business, in an illegal, fraudulent or unsafe manner, or because it is in the opinion of the Auditor operating with an insufficient portion of its assets in cash or readily convertible securities, denies such grounds, it may at any time within ten days, apply to the Circuit Court of Sangamon County, Illinois, to enjoin further proceedings in the premises; and such court, after citing the Auditor of Public Accounts to show cause why further proceedings should not be enjoined, and after the decision of the court or findings of a jury that such grounds do not exist, shall make an order enjoining the Auditor and any receiver acting under his direction, from all further proceedings on account of such alleged grounds.

All expenses of such receivership, including reasonable receiver's, solicitor's and attorney's fees, approved by the Auditor of Public Accounts, shall be paid out of the assets of such bank; and all expenses of any preliminary or other examinations into the condition of any such bank or receivership, and all expenses incident and in connection with the possession and control of any banking house, furniture and fixtures, books, records and assets of every description of such bank by the Auditor for the purpose of reorganization

or liquidation through receivership, shall be paid out of the assets by such bank.

When any banking association, organized under this Act shall have gone into liquidation under the provisions of this section of the Act, the individual liability of the shareholders provided for by section six (6) of this Act may be enforced by any creditor of such association by bill in equity, in the nature of a creditors bill, brought by such creditor on behalf of himself and all other creditors of the association against the shareholders thereof, in any court having jurisdiction in equity for the county in which such bank or banking association may have been located or established.

The Court in which such suit is instituted may appoint a receiver and require of him such bond and security as seems proper for the purpose of collecting, receiving, and disbursing the amounts due from the stockholders on account of their ownership of the stock of said bank. Said receiver shall have authority upon the order of the court appointing him to employ such auditors and assistants as may be necessary to establish and recover the liabilities of the stockholders, and may, with the approval of the court enter into compositions with insolvent stockholders, if any. The costs of such proceedings, including reasonable solicitor's fees for complainants' solicitors, and other necessary expenses of collection, may on the order of court, be paid out of the funds collected by said receiver. The funds so collected, after the payment of the costs and expenses of collection, including solicitors' fees, shall be distributed according to law among the creditors of said bank in such manner as the court shall direct.

Whenever the receiver of any bank, who shall have duly qualified and entered upon the discharge of his trust, shall find it necessary in his opinion to use and employ money of said trust in order to fully protect and benefit his said trust by the purchase or redemption of any property, real or personal in which said trust may have any rights by reason of any bond, mortgage, assignment, or other claim thereto, he may certify the facts together with his opinion as to the value of the property involved and the value of the equity his said trust may have in said property to the Auditor of Public Accounts together with a request for the right and authority to use and employ so much of the money of said trust as may be necessary to purchase said property or to redeem the same from a sale if a sale shall have been had, and if such request is granted said receiver may use so much of the money of said trust as the Auditor may have authorized to purchase said property at such sale.

No bill shall be filed or proceedings commenced in any court for the dissolution or for the winding up of the affairs or for the appointment of a receiver for any such banking corporation on the grounds of insolvency or impairment of the capital stock of such banking corporation or upon the grounds that such bank is being conducted in an illegal, fraudulent or unsafe manner, or upon the ground that it is operating with an insufficient portion of its assets in cash or readily convertible securities except in the name and by the authority of the Auditor of Public Accounts, represented by the Attorney General.

At any time, whenever two-thirds in number and amount of the creditors of any such bank or association, after any such receiver shall have been appointed by the Auditor, shall petition the Auditor of Public Accounts for the appointment of any person nominated by them as receiver, who is a reputable person and elector of the county in which such bank or association is located, it shall be the duty of the Auditor to make such appointment, and all the rights and duties of his predecessor shall at once devolve upon such appointee. (Act of 1919, June 23, Laws 1919, p. 224, §11; Laws 1923, p. 158, §1; Laws 1929, p. 174, §1; 1932, Sept. 30, Laws 1932, Fourth Sp. Sess., p. 3, §1; as amended 1937, July 1, Laws 1937, p. 247, §1; 1939, June 19, Laws 1939, p. 290; §1; 1941, July 17, Laws 1941, vol. 1, p. 267, §1.)

§12. Proceedings relating to change of name, business, etc.

* * * * *

And provided, further, that any corporation with banking powers availing itself of or accepting the benefits of, or formed under, this Act, and all corporations with banking powers existing by virtue of any special charter or general law of this State, shall be subject to the provisions and requirements of this Act in every particular, as if organized under this Act.

TEXAS INSURANCE CODE

Texas Insurance Code, Art. 21.28. Liquidation, Rehabilitation, Reorganization or Conservation of Insurers

Sec. 1. Definitions.—For the purposes of this article:

* * * * *

(d) "Liquidator" means the person designated by the Board of Insurance Commissioners as receiver, liquidator, rehabilitator, or conservator of all insurers as defined herein.

• • • • •

Sec. 2. Conduct of Delinquency Proceedings Against Domiciliary Insurers.—Whenever under the law of this State a court of competent jurisdiction finds that a receiver should take charge of the assets of an insurer domiciled in this State, the liquidator designated by the Board of Insurance Commissioners as hereinafter provided for shall be such receiver. The liquidator so appointed receiver shall forthwith take possession of the assets of such insurer and deal with the same in his own name as receiver or in the name of the insurer as the court may direct.

The said receiver and his successors in office shall be vested by operation of law with the title to all of the property, contracts and rights of action of such insurer, where ever located, as of the date of entry of the order directing possession to be taken. • • •

• • • • •

• • • The liquidator may sell or compound doubtful debts and may sell real or personal property under order of the court, but no such order shall be entered or sale made without notice and hearing.

• • • • •

Acts 1951, 52nd Leg., ch. 491.

ARTICLE 1388, R.C.S., TEXAS

Art. 1388, Revised Civil Statutes, Texas, 1925, 1206-7
Liquidation by officers

Upon the dissolution of a corporation, unless a receiver is appointed by some court of competent jurisdiction, the president and directors or managers of the affairs of the corporation at the time of its dissolution shall be trustees of the creditors and stockholders of such corporation, with power to settle the affairs, collect the outstanding debts, and divide the moneys and other property among the stockholders after paying the debts due and owing by such corporation at the time of its dissolution, as far as such money and property will enable them after paying all just and reasonable expenses; and for this purpose they may in the name of such corporation, sell, convey and transfer all real and personal property belonging to such company, collect all debts, compromise controversies, maintain or defend judicial proceedings, and exercise full power and authority of said company over such assets and property. Said trustees shall be severally responsible to the creditors and stockholders of such corporation to the extent of its property and effects that shall have come into their hands. Id.; Acts 1919, 2nd C.S., p. 140.

ARTICLE 489b, R.C.S., TEXAS

Art. 489b, Revised Civil Statutes, Texas, 1925, Federal deposit insurance

* * * * *

Sec. 3. The Federal Deposit Insurance Corporation created by Section eight of the Federal "Banking Act of 1933" (Section 12B of the Federal Reserve Act, as amended) is hereby authorized and empowered to be and act without bond as receiver or liquidator of any banking institution, the deposits in which are to any extent insured by said Corporation, and which shall have been closed on account of inability to meet the demands of its depositors.

The appropriate State authority, having the right to appoint a receiver or liquidator of a banking institution, may in the event of such closing, tender to said Corporation the appointment as receiver or liquidator of such banking institution, and if the Corporation accepts said appointment, the Corporation shall have and possess all powers and privileges provided by the laws of this State with respect to a receiver or liquidator respectively of a banking institution, its depositors and other creditors, and be subject to all the duties of such receiver or liquidator, except in so far as such powers, privileges or duties are in conflict with the provisions of subsection (1) of Section 8 of said "Banking Act of 1933."

* * * * *

Sec. 7. Upon the acceptance of the appointment of receiver or liquidator aforesaid by said Corporation, the possession of and title to all the assets, business and property of such banking institution of every kind and nature shall pass to and vest in said Corporation and without the execution of any instruments of conveyance, assignment, transfer or endorsement.

* * * * *

Acts 1935, 44th Leg., p. 459, ch. 183.

ARTICLES 2297 AND 2310, R.C.S., TEXAS

Art. 2297, R.C.S., Texas (1925) Receiver's power

The receiver shall have power, under the control of the court, to bring and defend actions in his own name, as receiver, to take charge and keep possession of the property, to receive rents, collect, compound for, compromise demands, make transfers, and generally to do such acts respecting the property as the court may authorize.
(Acts 1887, p. 120.)

Art. 2310, R.C.S., Texas (1925) Suit by or against

When property within the limits of this State has been placed in the hands of a receiver who has taken charge of such property, such receiver may, in his official capacity, sue or be sued in any court of this State having jurisdiction of the cause of action, without leave of the court appointing him. If judgment is recovered against said receiver, the court shall order said judgment paid out of any funds in the hands of said receiver as such receiver.

ARTICLE 1322, R.C.S., TEXAS

Any corporation may convey lands by deed, sealed with the common seal of the corporation, and signed by the president or vice-president or presiding member or trustee of said corporation, or in common form without seal by its attorney in fact where the instrument constituting such attorney in fact is executed in said manner first mentioned. Such deed, when acknowledged by such officer or attorney in fact to be the act of the corporation, or proved in the manner pre-

scribed for other conveyances of lands, may be recorded in like manner and with the same effect as other deeds. Acts 1905, p. 230; Acts 1939, 46th Leg., p. 133, §1.

TEXAS BUSINESS CORPORATION ACT

Art. 5.06. Effect of Merger or Consolidation of Domestic Corporations

A. When such merger or consolidation of domestic corporations has been effected:

* * * * *

(4) Such surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises, as well of a public as of a private nature, of each of the merging or consolidating corporations; and all property, real, personal, and mixed, and all debts due on whatever account; including subscriptions to shares, and all other choses in action, and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed.

* * * * *

Acts 1955, 54th Leg., p. 239, ch. 64.